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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 RICHARD HENRY MUTCH,

9 Petitioner,

10 v.

11 SCOTT FRAKES,

12 Respondent.

Case No. C9-1107RSL

ORDER DENYING
CERTIFICATE OF APPEALABILITY

13 This matter comes before the Court on petitioner's "Notice of Appeal" which the
14 Court considers a request for a certificate of appealability. Because the Court failed to consider
15 whether a certificate should issue when it issued a ruling adverse to petitioner, it does so now.

16 To obtain a certificate of appealability, the petitioner must make a substantial
17 showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). "Obviously the
18 petitioner need not show that he should prevail on the merits. He has already failed in that
19 endeavor." Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that
20 the resolution of the habeas petition is debatable among reasonable jurists or that the issues
21 presented were "adequate to deserve encouragement to proceed further." Slack v. McDaniel,
22 529 U.S. 473, 483-84 (2000). Where a petition is dismissed on procedural grounds, the Court
23 must determine whether "jurists of reason" would debate (1) whether the petition states a valid
24 claim of the denial of a constitutional right and (2) whether the district court's procedural ruling
25 was correct. Slack, 529 U.S. at 484.

26 ORDER DENYING
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Dated this 23rd day of March, 2010.

Robert S. Lasnik
United States District Judge